

HON'BLE SHRI G.S.SINGHVI, THE CHIEF JUSTICE

WRIT PETITION No.27512 OF 1998

Between:

D. Gangalatha

... Petitioner

AND

The Principal Secretary to Government of A.P.,
Revenue (Endowments) Department,
Secretariat, Hyderabad and two others

... Respondents

:: ORDER ::

Counsel for the petitioner : Sri P. Sainath

Counsel for respondent Nos. 1 and 2 : Assistant Government
Pleader for Endowments

Counsel for respondent No.3 : Shri Ch. Satish Kumar

June 20, 2007

In this petition filed on 24-9-1998, Smt. D. Gangalatha, widow of late Shri D. Narayana has prayed for striking down the cut off date specified in G.O.Ms.No.680 (Endowments-II) Department, dated 15-7-1987 issued by the Government of Andhra Pradesh making Revised Pension Rules, 1980 applicable to 6(a) category temples for the purpose of payment of pension and death-cum-retirement gratuity to the employees with effect from 1-1-1982.

The petitioner's husband late Shri D. Narayana, who joined service as Attender in Sri Raja Rajeswara Swamy Devasthanam, Vemulawada, Karimnagar District (for short, 'the temple') on 18-5-1968, committed suicide on 23-11-1981. After some time, the elder daughter of the petitioner viz., Smt. Uma Rani was appointed as Record Assistant in the services of the temple on compassionate grounds.

In the affidavit filed by her, the petitioner has averred that the cut off date does not have any rationale relation with the object of introducing the policy for payment of pension and death-cum-retirement gratuity to the employees of the identified temples and, therefore, the same is liable to be declared discriminatory and violative of Articles 14 and 16 of the Constitution of India.

In the counter filed on behalf of respondent No.3, it has been averred that the petitioner is not entitled to pension etc., in terms of G.O.Ms.No.680, dated 15-7-1987 because her husband died more than one month prior to the cut off date i.e., 1-8-1982.

I have heard learned counsel for the parties. In my opinion, the writ petition is liable to be dismissed because the petitioner has not impleaded the State of Andhra Pradesh and the temple as parties to the writ petition. Any order by the Court to strike down the cut off date specified in G.O.Ms.No.680 dated 15-7-1987 with consequential direction to the management of the temple to pay pension and other retrial benefits to the petitioner in lieu of the services rendered by her husband is bound to have adverse financial impact on the State Government or the temple. Therefore, non-impleadment of the State Government and the temple as parties is fatal to the maintainability of the petitioner's claim. In **Ranjeet Mal v. General Manager, Northern Railway, New Delhi**^[1] and **Chief Conservator of Forests v.**

Collector^[2], the Supreme Court considered the question whether the writ petition is maintainable without impleadment of the Union or the State as a party and answered the same in negative. The facts of **Ranjeet Mal's** case (supra) show that the appellant had challenged his removal from service. A learned Single Judge of Rajasthan High Court dismissed the writ petition on the ground that the Union of India has not been impleaded as party to the writ petition and that the impleadment of General Manager, Northern Railway was not sufficient. The Division Bench affirmed the decision of the learned Single Judge. Before the Supreme Court it was argued that the General Manager is the authority to hear appeal etc. against the removal and, therefore, non-impleadment of the Union of India was not fatal. The Supreme Court rejected the contention and held:

- “1) It cannot be disputed that the appellant was a servant of the Union. It is equally indisputable that any order of removal is removal from service of the Union. The appellant challenged that order, Any order which can be passed by any Court would have to be enforced against the Union. The General Manager or any other authority acting in the Railway Administration is as much a servant of the Union as the appellant was in the present case.
- 2) The Union of India represents the Railway Administration. The Union carries administration through different servants. These servants all represent the Union in regard to activities whether in the matter of appointment or in the matter of removal. It cannot be denied that any order which will be passed on an application under Article 226 which will have the effect of setting aside the removal will fasten liability on the Union of India, and not on any servant of the Union. Therefore, from all points of view, the Union of India was rightly held by the High Court to be a necessary party. The petition was rightly rejected by the High Court.”

In **Chief Conservator of Forests v. Collector** (supra), the

Supreme Court considered and upheld the objection taken on behalf of the respondents to the maintainability of the writ petition filed by Chief Conservator of Forests as well as the appeal arising therefrom. Paragraphs 12 and 13 of the judgment, which contained discussion on the subject, are extracted below:

“It needs to be noted here that a legal entity — a natural person or an artificial person — can sue or be sued in his/its own name in a court of law or a tribunal. It is not merely a procedural formality but is essentially a matter of substance and considerable significance. That is why there are special provisions in the Constitution and the Code of Civil Procedure as to how the Central Government or the Government of a State may sue or be sued. So also there are special provisions in regard to other juristic persons specifying as to how they can sue or be sued. In giving description of a party it will be useful to remember the distinction between misdescription or misnomer of a party and misjoinder or non-joinder of a party suing or being sued. In the case of misdescription of a party, the court may at any stage of the suit/ proceedings permit correction of the cause-title so that the party before the court is correctly described; however, a misdescription of a party will not be fatal to the maintainability of the suit/proceedings. Though Rule 9 of Order 1 CPC mandates that no suit shall be defeated by reason of the misjoinder or non-joinder of parties, it is important to notice that the proviso thereto clarifies that nothing in that Rule shall apply to non-joinder of a necessary party. Therefore, care must be taken to ensure that the necessary party is before the court, be it a plaintiff or a defendant, otherwise, the suit or the proceedings will have to fail. Rule 10 of Order 1 CPC provides remedy when a suit is filed in the name of the wrong plaintiff and empowers the court to strike out any party improperly joined or to implead a necessary party at any stage of the proceedings.

The question that needs to be addressed is, whether the Chief Conservator of Forests as the appellant-petitioner in the writ petition/appeal is a mere misdescription for the State of Andhra Pradesh or whether it is a case of non-joinder of the State of Andhra Pradesh — a necessary party. In a lis dealing

with the property of a State, there can be no dispute that the State is the necessary party and should be impleaded as provided in Article 300 of the Constitution and Section 79 CPC viz. in the name of the State/Union of India, as the case may be, lest the suit will be bad for non-joinder of the necessary party. Every post in the hierarchy of the posts in the government set-up, from the lowest to the highest, is not recognised as a juristic person nor can the State be treated as represented when a suit/proceeding is in the name of such offices/posts or the officers holding such posts, therefore, in the absence of the State in the array of parties, the cause will be defeated for non-joinder of a necessary party to the lis, in any court or tribunal. ...”

I am further of the view that the writ petition is highly belated and the petitioner is liable to be non-suited because she has not explained the long time gap of 11 years between the circulation of the policy framed by the Government and filing of the writ petition.

Sri P. Sainath argued that the petitioner should not be non-suited only on the ground of delay because she has been making representations to various authorities, but such an oral assertion cannot be made basis for overlooking the long delay of 11 years.

It is true that Article 226 does not prescribe any limitation for filing petition for issue of direction, orders or writs including writs of mandamus, certiorari, prohibition, habeas corpus and quo warranto, but in last 57 years, the courts have repeatedly held that belated claims should not be entertained under Article 226 of the Constitution.

In **State of M. P. v. Bhailal Bhai**^[3], a Constitution Bench of the Supreme Court considered the issue of delay in the backdrop of claim for refund of tax, which is said to have been illegally collected by the State. While allowing the appeals preferred by the State against the orders of Madhya Pradesh High Court, the Supreme Court laid down the following propositions:

“1) The special remedy provided in Art. 226 is not intended to supersede completely the modes of obtaining relief by an action in a civil Court or to deny defence legitimately open in such actions. The power to give relief under Art. 226 is a discretionary power. This is specially true in the case of power to issue writs in the nature of mandamus. Among the several matters which the High Courts rightly take into consideration in the exercise of that discretion the delay made by the aggrieved party in seeking this special remedy and what excuse there is for it.

2) It is not easy nor is it desirable to lay down any rule for universal application. It may, however, be stated as a general rule that if there has been unreasonable delay the Court ought not ordinarily to lend its aid to a party by this extraordinary remedy of mandamus. Again where even if there is no such delay the Government or the statutory authority against whom the consequential relief is prayed for raises a prima facie triable issue as regards the availability of such relief on the merits on the grounds like limitation the Court should ordinarily refuse to issue the writ of mandamus for such payment. In both these kinds of cases it will be sound use of discretion to leave the party to seek his remedy by the ordinary mode of action in a civil Court and to refuse to exercise in his favour the extra-ordinary remedy under Art. 226 of the Constitution.

3) The provisions of the Limitation Act do not as such apply to the granting of relief under Art. 226. However, the maximum period fixed by the Legislature as the time within which the relief by a suit in a civil Court must be brought may ordinarily be taken to be a reasonable standard by which delay in seeking remedy under Art. 226 can be measured. The Court may consider the delay unreasonable even if it is less than the period of limitation prescribed for a civil action for the remedy but where the delay is more than this period, it will almost always be proper for the Court to hold that it is unreasonable.”

In **Trilokchand and Motichand v. M.B. Munshi**^[4], another

Constitution Bench of the Supreme Court considered the issue of delay in a case in the backdrop of the facts which were similar to those in **Bhailal Bhai's** case (supra) and laid down the following propositions:

“Utmost expedition is the sine qua non for such claims. The party aggrieved must explain satisfactorily all semblance of delay. No period can be indicated which may be regarded as the ultimate limit of action for that would taking upon itself legislative functions. In England a period of 6 months has been provided statutorily, but that could be because there is no guaranteed remedy and the matter is one entirely of discretion. In India each case will have to be considered on its own facts. Avoidable delay affecting the merits of the claim, will disentitle a party to invoke the extraordinary jurisdiction.

The question is one of discretion for this Court to follow from case to case. This Court need not necessarily give the total time to the litigant to move this Court under Article 32, even though he may be within statutory limitation. Similarly in a suitable case this Court may entertain a petition even after limitation. It will all depend on what the breach of the Fundamental Right and the remedy claimed are and how the delay arose.”

In **Rabindra Nath v. Union of India**^[5], the Supreme Court referred to the decision in **Trilokchand and Motichand's** (supra) and declined to interfere with the seniority of Income-tax Officers Class I Grade II on the ground of delayed filing of the writ petition. In paragraph 32, the Supreme Court observed as under:

“It seems to us that the petitioners cannot complain of the breach of Articles 14 and 16 of the Constitution in respect of acts done before the Constitution came into force. These acts in this case were (1) appointments of the respondents to Income Tax Officers Class I, Grade II Service; (2) Seniority List as existing on 1-1-1950; and (3) the Seniority Rules of 1949 and 1950, in so far as they had effect up to January 26, 1950. It will

be recalled that the first seniority list was prepared as on January 1, 1950 and even if the seniority list was finally settled after the Constitution came into force, the Rules to be applied were the Seniority Rules of 1949 and 1950. In other words, if the list had been finally settled on January 1, 1950, it is clear that no appeal could be made to Articles 14 and 16 of the Constitution. The fact that the List was prepared after the Constitution came into force would not enable the petitioners to appeal to Articles 14 and 16. The position is however, different in so far as changes were made in the seniority List as a result of change in the 1952 Seniority Rules. These changes were post-Constitution and if they are hit by Article 14 and Article 16 of the Constitution, the petitioners would have the right to complain of the breach of their fundamental rights under these Articles.”

In paragraph 35, the Supreme Court considered the rule of equity and observed:

“We are not anxious to throw out petitions on this ground, but we must administer justice in accordance with law and principles of equity, justice and good conscience. It would be unjust to deprive the respondents of the rights which have accrued to them. Each person ought to be entitled to sit back and consider that his appointment and promotion effected a long time ago would not be set aside after the lapse of a number of years. It was on the ground that this Court in **Jaisinghani's case, 1967-2 SCR 703 = (AIR 1967 SC 1427)** observed that Class II officers who have been appointed permanently as Assistant Commissioners. In that case, the Court was only considering the challenge to appointments and promotions made after 1950. In this case we are asked to consider the validity of appointments and promotions made during the periods of 1945 to 1950. If there was adequate reason in that case to leave out Class II officers, who had been appointed permanently Assistant Commissioners, there is much more reason in this case that the officers who are now permanent Assistant Commissioners of Income-tax and who were appointed and promoted to their original posts during 1945 to 1950, should be left alone.”

While rejecting the petitioner's plea that he had been making representation to the government, the Supreme Court observed:

"...But there is a limit to the time which can be considered reasonable for making representations. If the Government has turned down one representation, the making of another representation on similar lines would not enable the petitioners to explain the delay. Learned counsel for the petitioners says that the petitioners were under the impression that the Departmental Promotion Committee had held a meeting in 1948 and not on April 29, 1949, and the real true facts came to be known in 1961, when the Government mentioned these facts in their letter dated December 28, 1961. We are unable to accept this explanation. This fact has been mentioned in the minutes of the meeting of the Committee which met in February 1952 and we are unable to believe that the petitioners did not come to know all these facts till 1961. But even assuming that the petitioners came to know all these facts only in December 1961, even then there has been inordinate delay in presenting the present petition."

For the reasons stated above, the writ petition is dismissed.

G.S.SINGHVI, CJ

June 20, 2007

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[\[1\]](#) AIR 1977 SC 1701

[\[2\]](#) (2003) 3 SCC 472

[\[3\]](#) AIR 1964 SC 1006

[\[4\]](#) (1969) 1 SCC 110

[\[5\]](#) AIR 1970 SC 470